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CASE_____

IN THE SUPREME COURT
OFTHE UNITED STATES

EDUARDO E ROJAS ------PETITIONER

vs

IONICS,INC. ET.AL.,------RESPONDENTS

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On Petition for writ of certiorari to the United States courts of appeals for the first circuit

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Appendix to Petition for Writ of Certiorari

Volume II

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57 pp

# APPENDIX D

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1 The most important issue is whether the service provided by Rojas to Ionics during 1995 and 1999 were considered that of an employee or an independent Contractor.base on evidences presented and proof of his relationship with Ionics. ( amended Complain #14 exh. 9A-9E )

2 The second most important question is whether Ionics breached the Implied covenant of good faith and fair dealing. by recalling nonvested Interest for past services. Although retained to do services under a nonemployee status. being the services provided the same as before the changing of status.

3) The last issue is : Rojas Discrimination charges were rejected by the District court for noncomplying with states regulation. when in fact the evidences presented shows that it did complied with the procedure U.S.C. 29 section 633 (b) and the age act impliying its filing requirements,that federal courts should recognize not preclusion by state administrative {501 U.S. 104,105 } findings.

## STATEMENT OF THE CASE

On or about December 1994 The plaintiff " Rojas " was induce to accept Earlier Retirement after 27 years of being employed by the defendant " "IONICS INC " , subsequently of accepting the deal Rojas was retained by the Defendant on Consultant basis.

Rojas was to be paid $ 3000 per Month for half time plus health Insurance and travel Expenses.

On November 12 of 2000 Rojas filed a Complaint as a result of the Defendant " Ionics Inc" failure to recognize the Services of Rojas from 1994 until 1999 as that of a key Employee and illegally withholding interest that would have been vested at the age of 65.These Interest had been recalled in 1995 with the presumption that Rojas was not longer an Employee but an independent Contractor as a result of having withdraw his pension fund earlier than 65 years old, and as it was confirmed by the IRS on February of 2000 ( amended complaint #14 exh.11 ) . later on Rojas discovering that the company had violated state laws, breached the implied covenant of good faith and

fair dealing ,and had discriminated him among others who had retired earlier.and finally use unlawful methods to terminate his Employment on July 14 of 2000.

## STATEMENT OF FACTS

### Independent contractor or Employee

1.) The first issue presented is the question of Rojas Employment Status After he accepted an Earlier retirement deal. These facts are related specifically to the work and duty of Rojas During 1995 through 1999

2.) Rojas Status presumable is changed on December 15 , but retroactive to November 30 of 1994. Rojas at the Time was the only Senior Electrical Power Engineer ,and the one who had

designed about 90% of the major Installation through out the World , He was the only Magnetic Electrical Engineer Responsible for all the Power Transformer Installed in all the plants build since 1969. He was bilingual , and was being used at the time on a major Installation in Argentina,in which He was the Electrical Project Engineer.until on or about July 1995. Because his vast Experience , He was in Demand and practically 75 % of the work was coming to his desk.Proof of the Additional jobs that he handle besides his main obligation to one project. Rojas Demand had increased over the years and to facilitate his expertise to the various groups, he was allowed to be used in any project by other groups .hence his Work rather than decreasing in 1995 and 1996 did in fact increased

resulting in more than the 1/2 time as it was agree in 1994. In 1995 He did invoice the Company for 1541 Hrs on about 12 projects. not counting week ends and travelling time on overseas duty. neither overtime hrs. On 1996 Rojas was involved in two large projects but was involved in or about 14 additional tasks.invoicing the company for 1104 hrs. ( Rojas asked for nonvested interest that would have been vested on or about May 22 1996. ). as a result of still being a key Engineer and work more than 1/2 time. ( #14 exh. 5).

In 1997 Rojas work decline do to the Departure of Kachadurian and a new non friendly Management taken over. but still Rojas kept doing his job very much with the same obligation but the company fell

in a period of transition and most of the jobs in which Rojas was a lead project Electrical Engineer were cancelled. except one project in Paraguay. For 1997 Rojas Invoiced the company for 672 hrs and worked in about 9 small projects. The agreement of 1994 was for half time at $3000 per month. However this agreement was questioned by the new Manager , Who denied payments at the end of 1997 and informing Rojas that He had retired and was not longer an Employee neither had a contract. Therefore He would not honor the Invoices presented. thus provoking the meeting of January of 1998 . see ( Amended Complaint #14 Exh. 9 A , B, C. ) and Factual Background ( document # 8 ) lines 7-10 page 4

3.) Method of payment

Rojas was instructed to provided a monthly invoice on the hours spent on each job that he was assigned to work and charge the Equivalent of $3000 Per Month per hour basis. or $34.61 per hour.In 1998 he was allowed to charge $ 36 per hour.

See ( # 14 exh. 9A- E )

4. ) Travel Expenses would be file using the Employee Form supplied by the company. All expenses would be charge to the job that he was traveling for. The travel arrangement would be made by the Company selected travel agency. Schedule, meetings, and place to stay where under the discretion of the group job Manager.

5.) On January of 1995 he was told to provide a company name to put all traveling and office

expenses in Florida. And from then on two checks were submitted to him . one bearing his employee number ( E626 ). (#14 exh.23 )

And the other would have the Number assigned to that company name. On January 1996 this method of payment did change and all payments were made on one check . however the Forms given to accounting was still the same.

6.) After the meeting of 1998 he was transferred to work for Exec. VP.Papastauros on a large project for Acapulco. Rojas was to be the Electrical project Engineer , Basically nothing had change , except that he was told to give a vendor number. and he was not to be used by other groups. he was to be used strictly on that Project. but still employed by Ionics with his Office,Equipment,

Secretarial and drafting help provided by " Ionics "

When in Boston he did complied with the Employee working hours, answer calls and was open to meetings and question related to other jobs or technical matter. Including holding Electrical seminar sections to Field engineers .

Rojas Position of Key Engineer has been proved by the function, obligation and responsibility that he had on all the assigments given to him up to 1999. see ( amended complaint # 14 exh. 9A-E ) and Factual background document #8 page 11 paragraph 21 and 22.

THE STOCK OPTION AGREEMENT

1) The stock option grants were given to Rojas in 1991 and 1993 on his effort to design the

Formulation used by him on power transformers used in the company water demineralization process plants. and adapt to a computer program so any Engineer .could select a transformer without his assistance's it was required then. The Program was finished on or about 1991, and test were being made up to 1993. ( #14 Exh. 20 )

and it is in used . This task was done on overtime basis , but Rojas was an exempted employee , so rather than taking time off , he was given 1000 shares in 1991 and 1000 shares in 1993, under an Stock Option agreement and a 1979 Stock option plan.

The share price of Ionics split two for one in 1994 and Rojas had 4000 shares at the end of 1994 1200 were vested from 1991 and 400 from 1993.

The rest would be vested at the age of 65, although Rojas had been told by the administration that the 1993 set would vest in 1998. Rojas had no intention to Retire and the Fact that he accepted the deal on December 1994 . was that he was offered a lump sum of $22000 more than if he had waited until 1996. and also a suggested deal in Florida. and with not objections he did accepted. A letter of confirmation proceeded ( #14 exh. 3 ) and Human resources did follow up with Distribution of other benefits .(#14 exh. 4) Rojas Continued doing his job, and There was no further meeting .

On or about February of 1995 Mr. Kachadurian inform Rojas that the administration had decide to recall the unvested options as a result of not longer

being on full time nor a key engineer. and of course he could exercise the vested units. On March 1995 Rojas was instructed to work as much as he could, so to keep up with the demand of new projects coming in. and so he did , and in doing so he did maintained his old position and time period to meet a requirement of the Agreement under paragraph 4 as of the 1979 Stock option plan specified.

[ In the event that any Options granted under the plan shall be surrendered to the company or shall terminate,lapse or expire for any reason without having exercised in full , the shares not purchased under such Options shall be available again for the purposes of issuance pursuant to the plan.]

However Ionics in 1997 had other plans.

PAGES 14 THROUGH 25

HAVE BEEN OMITTED

SECTION V : Count II Breach of Contract

1.) The court erred on his determination that Ionics did not Breach the stock option agreement but rather Ionics took actions which effectively denied him the benefits of the plan.therefore calling it a tort

2.) The action of denying Rojas employee status subsequent to his retirement is irrelevant in regard to the Stock Options .The fact is that Ionics retained Rojas on consulting bases for 1/2 of his time and as required or on call was a proof that Rojas remained being employed by Ionics. furthermore there was a noncompetetion provision in the agreement that would not allow Rojas to work on any job related to Ionics business for two years ,without the consent and approval by the board of

director. therefore holding Rojas to that agreement .( # 14 exh. 2A par.9 and 2 B par.12.)

Ionics could have cancel the agreement any time for any reason, but would have to do it in accordance with the laws of Massachusetts and under the provision and rules of the agreement ( # 14 exh.2A paragraph 12 )

3.)this is an implied covenant under Massachusetts law. therefore a binding agreement or contract. subject to Massachusetts contract terms and laws See Sargent v Tenaska, Inc ,914 F.Supp.722,729,730 ( .Mass 1996 )

which the First District Court on cross Motion for summary judgement ruled the Employment letter was a contract, suggesting that Sargent might be

entitled to ownership interests,or comparable damages.

4.) as opposite to Sargent , Rojas accepted the agreement on 1991 and 1993 In consideration of having design the formulation for Magnetic power devices on his own time.see ( #14 exh. 20 and 20A ) ( Rojas was the Sole Magnetic Designer for the company ). The grants were given subject to a contract for 5 years and the vesting Schedule was 20% per year for 5 year and automatically vested at the age of 65. Rojas remained working well passed his 65 birthdate.

5.) Rojas case is well adapted to the fortune case. ( reference in Sargent)

The Fortune doctrine is easy to grasp in the simple

case that spawned it:

an at will salesman, entitled to a commission payable at later date, is fired after the sale but before the date of payment ; and the reason for the firing is to cut off the commission . In that case , Massachusetts courts imply a covenant of good faith and fair dealing, treat the discharge as a BREACH, and affix the remedy as an award to the salesman of future compensation for the completed sale.

6.) Since Fortune so held in 1977, Massachusetts appeals courts have both extended and limited the doctrine in several important decisions. for example

Fortune-based recoveries have been allowed in

Gram v Liberty Mut. Ins Co 429N.E.2d 21,29 (Mass 1981)

Maddaloni v Western Mass. Bus Lines. 438 N.E. 2d 351,355-56 (Mass 1982)

Cataldo v Zuckerman, 482 N.E. 2d 849, 855-856 ( Mass.app. Ct. 1985)

These cases make clear that Fortune is not limited to simple cases of commission sales with deferred payments.

7.) The First District court of appeal follow with the following discussion

[ " The recurring difficulty presented in the case before us ,is how to decide whether the unvested interest relate to" past" or " future services.We treat this characterization issue as one of law. The CONTRACT terms agreed to by the parties are in dispute, the debate is whether the law should extend protection ( assuming bad faith discharge ) beyond the express terms of the contract to certain expectancies. The extend of such protection is a primarily a matter for judges, not juries.See Gram II, 461 N.E.2d at 798 ; cf. Green v Richmond, 337 N.E.2d 691,695 ( Mass 1975 )" ( Judge decides the legal question of whether undisputed contract terms violate public policy)]

It is easy to find a protectable interest where, as in Fortune, the promised future payment is directly tied to a particular past service.

8.) How ROJAS case fits in Fortune doctrine.

Rojas was offered a higher pension Lump Sum payment , and once accepted he was given two options , A 28 week lump sump payment, or a Consultant contract for $3000 per month for 1/2 time. by accepting the contract Option , it is understandable that he was retained by the company to work for them. So the question is What intention did the company had in regard to Rojas future employment status .whether he was to be part time employee, a consultant ( less than 8 Hrs per week ) or an independent Contractor. and choosing the last

as the company claimed. It was the only offered choice .It clearly shows that it was with Intention to Breach the Stock Option Agreement. Basically Rojas was terminated and then hired back under a new term. with no benefits and all other nonvested Interest Gone,

9.)Yet it can be seen by the evidence presented . ( #14 Exh. 9A-E ) that Rojas was doing exactly the same function of a key Engineer. So the question that Rojas ask the Court . Is there any difference of Rojas to that of Fortune ?

Was not that a Breach of contract ? If the Fortune doctrine was easy to grasp Rojas case should be even easier to decide as Rojas service the company for 5 more years providing same Engineering level

for one fraction of the rate being paid to others in similar situation.

10.) The reason given by the company to take the vested interest is that Rojas was not a key Engineer or an employee ,but the fact is that the company retained Rojas doing that work past the vesting period . and just claiming that he was an Independent contractor suscefully had got away with it. However The company Intention was tested when the IRS made the determination in February of 2000. and Rojas submitted a bill for a sum of $ 158319 for wages differential of an Employee and that of an Independent Contractor see ( #14 exh. 12 ) and was ignored. thus hinting that there was bad faith in their dealing.

11.) Arguendo that Rojas was an Independent contractor ,Which under the State Law M.G.L. ch 149 section 24B and ch 151: section 19 (4) He could not have been one. at the age of 63 and 1/2.

The U.S. 9th Circuit Court of Appeals on the Vizcaino v Microsoft case

Judge REINHARDT, had the following opinion:

[ Large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, and thereby increasing theirs profits.This practice has understandably led to a number of problems, legal and otherwise. One of the legal issues that arises is exemplified by this lawsuit.
The named Plaintiffs,who were classified by Microsoft as independent contractors, seek to strip that label of its protective covering and to obtain for themselves certain benefits that the company provided to all of its regular permanent employees. see Vizcaino v Microsoft Corporation No 94-35770 ( 9th circ. 1996- 1997 ).]

12.) [ A three -judge panel of the Ninth Circuit Court of Appeals in March of 1997 by a 2-1 vote that an employer must pay benefits under two employees benefits plans to a group of workers that the employer misclassify as Independent contractors.The Employers were designated as "freelancers" by Microsoft and were treated as independent contractors. Freelancers were distinguished from employees among other things that they were required to submit invoices documenting their hours and were paid through the accounts receivable department rather than payroll department .The freelancers were told when hired that would not be eligible for benefit]

13.) The District court judge erred in barring this count under a Tort actionRather than a Breach of contract. Rojas do disagree for various reasons. The Language of the agreement in the Document is clearly written as A covenant between the two parties, for a period of 10 years. Except that At the age of 65 , the company allows the holder of the agreement to Exercise all unvested units

without having to wait for the period of Vesting. This agreement is construe pursuant to the Massachusetts law.And is binding upon the respective parties . see ( #14 exh. 2A page 5 )

14.) Under this language Ionics had the right to not tender Employment to Rojas but had to inform Rojas of their intention to repudiate the Agreement in writing . and that was not done until the letter of disclaiming any wrong doing on July 14 of 2000. see [ M.G.L. ch 260 section 13 ]

15.)Therefore the Tort action should be taken as from July 14 of 2000 . that its Memo indicating the Termination of the Relationship and that the Administration would not honor his debt to Rojas. pursuant to the letter sent by Rojas to Goldstein on July 6 of 2000.

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STATEMENT

The Argument on this document have been edited to remove Irrelevant material .

ARGUMENT ALLEGATIONS

on Reply brief Dated 1/25/02

BREACH OF FIDUCIARY

1.) The comments of Ionics on the Breach of fiduciary are misleading assumptions that it not take place , nor there is any evidence to substantiate that Ionics acted properly in handling Rojas Earlier Retirement, such as in the OWBPA procedure enacted by congress in 1990 which was designed to protect the Rights and benefits of older workers,or in fact any other method of termination that would have prevented this action and waste of precious time. but handed a one page memo, which clearly

indicates that Rojas was to continue to be employed by Ionics.

2.) Rojas did not have to retired in December 1994, Rojas had the right to cash his vested benefits,and so he did under the influence of their Executive VP. Mr. Kachadurian to obtain a larger lump sum. and so others from different groups ,that were retained on consulting bases and part time schedule and classified Employees.

3.) The Memorandum of Mr. korn in 1997, the financial report showing a great move by Rojas to have retired and sacrifice the " Options" in 1998, and finally the grant final on July of 2000 were all consecutive steps to conceal the big mistake that some one had made. so to said that there was not misleading, or misrepresentation on part of Mr.korn

memos in terms of the law , has to be blind. The evidences presented, along with the States and Federal laws are sufficient to proof that Mr. Korn did Engaged in misleading Rojas from the true , for unknown reasons.

BREACH OF CONTRACT

1.) The defendant argument on the Breach of Contract does not have any lawful meaning other than misleading statement and distorted view of what in fact the contract is all about and the reason that it has been breached. so to justified or agree with the District Court Judge wrong decision. There is enough detailed information and reasons why Rojas feel that there was a breach of contract. and the scenario put together by Ionics fails for for the simple reason that Breach of Fiduciary duty

to reveal facts constitutes Fraudulent concealment cause of action. not a tort action.

Riley v Preznenl ( 1991 565 N.E.2d ).

and the other fact that Ionics fail to recognize is that Rojas was retained to be employed by Ionics. "Stock and Barrel" but by illegally making him an Independent Contractor . Basically he had been denied the right to exercise his then vested options therefore breaching it.

2.) "Option contract " A legally enforceable agreement under which one party promises to honor an offer to buy or sell something for a specific prize within a set time. Rojas met his obligation according with the rules and took his chances on the prize of the Stock that could have gone down below or equal to the buying prize. and in the mean

time he was held to work for " Ionics only" as the contract specified.(#14 exh.2A par 9and 2Bpar 12.) This agreement was done under a meeting of the mind . and the amended complaint shall be actionable, under a Remedy selected by the Court.

3.) The fact that Rojas employment as an Employee has been denied is the same as been fired in 1994. therefore the circumstance in Dec 1994 were much the same as in the Fortune case. so the Breach of Contract " Prevails".

4.) The IRS ruling is irrelevant , it was for taxes purposes and it was done base on the information presented.without taken in consideration the current states laws.and for all purposes invalid in this case

5.) Finally to rest this count because the shares were transferred without proper Knowledge or

consent in derogation of contractual terms it is characterized as an action for conversion, or an action for breach of contract. It does not involve the type of accident resulting in injures to person or properties on which draftsman of Massachusetts three year statute focussed. [ Royal Globe Ins. co v Craven 585 N.E. 2d 315,320 (Mass 1992 )] . Rather, it involves a claim to recover from another money which in equity and good conscience He is not entitle to keep. The latter type of claim according to the supreme Judicial Court is usually advance in a contract action [ Kagan v Levensen, 134 N.E. 2d 415,417 ( Mass 1956 ) ] In these circumstances, it was not error for the District Court to apply the six year contract Statute of limitations to plaintiff contract claim.

Quoting A paragraph from [ Ansin v River Oaks Furniture First circuit 1996 case 1734 ]

DISCRIMINATION

1.) Rojas could have been discriminated on or about December 1994, because the transition of status was not done within the proper method and under the law. however Rojas could not have detected it because the following reasons.

(a) Rojas position with the company at the time was excellent, he was very much in demand by the various groups, and his relationship with Mr. Kachadurian , and other Executives was of trust and friendship. In which he would be contacted by them when Major Electrical field problems did arise. his Experience was essential.

(b) Rojas was very active at the time being involved in new proposals, major field problems, and existing new Installations.

(c) The Earlier pension deal was not to retire, but to continue working . The fact that Rojas was to open an office in Miami was with view in continuing on and take care of Central and South America business and field problems.So what Reason had Rojas to file for a discrimination in 1995 ? or 1997 Still in 1998 Rojas was a key Engineer in an important Installation in Mexico up to 1999. and he was working for the EXE. VP. of the company Mr. Papastauros. who in 1998 informed Rojas that he would be involved in future Plants Installations.

2.) So what triggered the company to let Rojas go

was the fact that The company heard rumors that Rojas was to talk to the IRS. and rather than terminate all the agreements made in 1999. opt for not calling Rojas anymore and closing his office. Rojas was still under the agreement of 1967, 1994 and then January 1998. So in fact the effect of this charge is the letter of Rojas to Mr. Goldstein on July 6 of 2000. and then the replied by Mr. Korn repudiating Ionics agreements and debts to Rojas.

3.) This is an Intentional Discrimination , Cause by Rojas contacting others Authorities in his effort to find out the reason for Ionics denied his Stock Options and other Benefits , as a result of been mislead in December of 1994 to accept a position which was not of an Employee.

4.) whether the Motivation for the Defendant was Age , Race Or retaliation. The reasons written in the complaint are exactly the reasons given by Ionics to take away additional benefits and Stock Options for having taken the pension fund earlier. Rojas could not aver the motive for this act other than Ionics had discriminatory taken away his right to enforce contracts and had deprived him of employment opportunities.

5.) The EEOC is the Federal authority in charge of all discriminations , and it was their decision to dismissal and submit the right to sue notice. base on the Fact alleged. and the Reason for using Age Discrimination is the fact that age was the factor that made the difference.If Rojas was not at that Retirement age , it would not had happened. Rojas

has explained this issue very well in his supplement Memorandum dated 7/26/01 page 9,10 and 11

6.) the reason for using M.G.L.93 section 103 (a) was that Rojas at the time had been considered an Independent Contractor. by the IRS. However , later on finding out that his Employment Status was still a former Employee and he had the right to existing labor laws.

Robinson v Shell oil co. ( certiorari to the United states court of appeals for the fourth circuit. no 95-1376. 1996)

7.) Finally to close this charge once and for all . It is very clear that the circumstances of Rojas filing was very much on line with that of Solimino

[ Solimino v Astoria Federal 501 U.S. 104 2nd Circuit no 89-1895 ( 1991)]

In which Respondent filed a charge with the EEOC , and under the work- sharing agreement,the EEOC referred his claim to the State agency responsible for claims under New York's human rights law. because the State decision was upheld in administrative review . Rather than appealing he did file in the District court. The court granted Astoria Motion for summary judgement. holding that the State's age discrimination findings precluded Federal litigation of the claim.

The Court of Appeals reversed, inferring from the Age Act's structure a legislative intent to deny preclusive effect to such administrative proceedings

8.) Rojas did filed properly with the EEOC and as indicated in the form a copy was sent to Florida Comm.on Human relations State or local office

who probable dismissed it as nonjurisdictional rather than send it to the State of Massachusetts . Because the sharing agreement between the States and EEOC

EEOC then issued a dismissal with the right to suit within 90 days. If the EEOC gave Rojas the right to suit , why Rojas had to file again with MCAD.

The Argument by the Defendant is that Rojas had to file with MCAD , wait the 60 days period and then file with the EEOC. well the fact that under the new Discrimination rules , filing is simultaneously with the EEOC and the States , So States proceedings shall be deemed to have been commenced at the time such statement is mailed to the State Authority 29 U.S.C.633(b).

If EEOC sent it to Florida , because Rojas was a

citizen of Florida, that is beyond Rojas Control and it is unfortunate but not a reason for dismiss an Adea charge that Rojas would have used instead of 151B that the Defendant has been suggesting from day one. Rojas did file his complaint within the time specified and the EEOC did proceed accordingly to the rules.

but Arguendo that EEOC did not notified the state where the discrimination did occurred and Rojas did not file a complaint with MCAD within the time see[Oscar Mayer co v Evans, 441 U.S. 750 1970)] for a very interesting case.

In which a respondent was informed by the Labor Department that he did not have to file with the State but only the EEOC. Then dismissed by the

Court of Appeals. under the provision that , under 14(b), resort to Administrative remedies by claimants in States with agencies empowered to remedy age discrimination in employment is mandatory , not optional and federal suit may not be brought under the ADEA unless the claimant has first commenced a proceeding with the appropriate State Agency, Pp 754 -758. But then reversed by the Supreme court and so ordered the District Court to hold respondent's suit in abeyance until the respondent had complied with the mandated of 14(b) and allowed the State Civil Rights Commission an opportunity to entertain respondent's grievance before his Federal litigation can continue.

9.) However a grievant is not required by 14 (b) to commence state proceedings within the time limits specified by State Law. Pp 758-764.

(a) By its terms ,14 (b) requires only that the State proceedings be "commenced " 60 days before litigation is instituted, and use of the word " commenced " strongly implies that state limitations periods are irrelevant. This implication is made express by the provision in 14 (b) that if a state authority imposes requirements "other than a requirement of the filing of a written and signed statement of the facts upon which the proceedings is based " the proceedings shall be deemed to have been commenced for purposes of 14 (b) at the time such statement is sent by registered mail to the

appropriate state authority. State limitations periods are requirements other than specified in 14(b)and, thus, even if a state were to make timeliness a precondition for commencement, a state proceeding will be deemed commenced for purposes of 14(b) as soon as the complain is filed Pp759-760

(b) This construction of the statute is consistent both with the ADEA'S remedial purposes and with the purposes of 14(b) , which does not stipulate an exhaustion requirement, but is intendent only to give states agencies a limited opportunity to settled the grievances of ADEA claimants in a voluntary and localized manner so that the grievants thereafter have not need or desire for independent federal relief. [441 U.S.750,752 ] The ADEA'S structure-

setting forth limitations periods in explicit terms in 7(d) and (e) ,not 14 (b)- reinforces the conclusion that state procedural defaults cannot foreclose federal relief and that state limitations periods cannot govern the efficacy of the federal remedy. Pp 761-764.Therefore, it is clear why in Solimino the court of appeal did reversed the district court ruling . and Rojas case is in fact a similar case .

# APPENDIX E

# STOCK OPTION AGREEMENT

IONICS, INCORPORATED

Non—Qualified Stock Option Agreement

This Agreement made as of this 31st day of July, 1991, by and between Ionics, Incorporated, a Massachusetts corporation (the "Corporation"), and EDUARDO E. ROJAS (the "Employee").

WITNESSETH THAT:

WHEREAS, the Corporation has adopted a plan entitled the "1979 Stock Option Plan" for the granting to selected employees of options to purchase shares of its stock; and

WHEREAS, the Compensation Committee of the Board of Directors of the Corporation has authorized the grant of this stock option pursuant and subject to the terms of the Plan, a copy of which is attached hereto and incorporated herein, and subject to the further terms and conditions set forth herein;

NOW, THEREFORE, the Corporation and the Employee hereby agree as follows:

1. Grant. Subject to the terms and conditions of the Plan and this Agreement, the Corporation does hereby grant to the Employee an option to purchase from the Corporation an aggregate of 1000 shares of its Common Stock ("Stock"). This option is not intended to constitute an "incentive stock option" within the meaning of Section 422A of the Code.

2. OptionPrice. This option may be exercised at the option price of $43.00 per share of Stock

3. Term and Exercisability of Option. This option shall expire ten years and one day after the date of grant set forth at the conclusion of this Agreement, and except as limited pursuant to Section 7..hereof shall be exercisable in full from and after the date of grant, provided that the Employee is not in violation of Section 9 hereof, or of any other agreement with the Corporation..

4. Method of Exercise. To the extent that the right to purchase shares has accrued hereunder, this option may be exercised from time to time by written notice to the Corporation substantially in the form attached hereto as Exhibit 1. As soon as practicable after its receipt of such notice, the Company shall, without transfer or issue tax to the Employee (or other person entitled to exercise this option), deliver or cause to be delivered to the Employee (or other person entitled to exercise this option), stock certificates representing the number of shares to be issued upon such exercise, against payment of the option price in full for the number of shares to be delivered, by means of payment acceptable to the Corporation in accordance with Section 7 of the Plan; provided, however, that the time of such delivery may be postponed by the Corporation for such period as may be required for it with reasonable diligence to comply with any applicable law.

If the Employee (or other person entitled to exercise this option) fails to pay for and accept delivery of all or any part of the number of shares specified in such notice upon tender of delivery thereof, his right to exercise this option with respect to such undelivered shares may be terminated by the Corporation.

5. Non—assignability of Option Rights. This option shall not be encumbered, or be assignable or transferable by the Employee except by will or by the laws of descent and distribution. During the life of the Employee, this option shall be exercisable only by him.

6. Effect of Termination of Employment or Death. In the event that the employment of the Employee by the Corporation (which term for purposes of this Section 6 shall include any subsidiary of the Corporation, within the meaning of Section 425(f) of the Code) is terminated voluntarily by him, or by the Corporation on account of his malfeasance or his violation of this or any other agreement with the Corporation, or any similar justifiable cause, this option shall terminate immediately, In the event that the Employee during his life ceases to be an employee of the Company for any reason other than those described in the preceding sentence, this option, or the unexercised portion hereof which is otherwise exercisable on the date of his termination of employment shall terminate thirty (30) days after the date of his termination of employment, but in any event no later than the date of expiration of the Option. In the event of the death of the Employee while he is employed by the Company, or within the thirty—day period described in the preceding sentence, this option, or the unexercised portion hereof which is otherwise exercisable by the Employee at the date of his death, may be exercised by his personal

representative at any time prior to the expiration of ninety (90) days from the date of death of the Employee, but in any event no later than the date of expiration of the option; provided, however, that the right of the personal representative to exercise this option shall not extend to shares of Stock which on the date of the Employee's death were subject to the repurchase rights set forth in Section 8 hereof,

7. Compliance with Securities Laws. The Employee hereby represents that he or the person exercising this option in his stead will be acquiring the Stock for investment and not with a view to its sale or distribution, and he and they respectively, as a condition to being issued the Stock, hereby covenant and agree with the Corporation that no transfer, sale, exchange, assignment, pledge or encumbrance of the Stock or any portion thereof, nor any commitment to take such action, shall be made, whether voluntarily, involuntarily, or by operation of law, by bequest or otherwise, without prior written notice of the Employee or holder thereof to the Corporation, and compliance with this Agreement. The issue and resale of Stock under the Plan is presently covered by effective registration statements under applicable securities law, and it is the policy of the Corporation to seek to maintain such registrations in effect..

The Corporation will notify the Employees or other person exercising this option if for any reason the registration are not maintained in effect, and in that event the Stock may not be transferred unless the Corporation is furnished with assurances satisfactory to it that the transfer would not constitute a violation of applicable securities law.

8. Repurchase Rights of the Corporation. Upon the occurrence of a Repurchase Event (as hereinafter defined), the Corporation shall have the right to repurchase, at a price equal to the option price set forth in Section 2 hereof, all or a portion of the Stock issued upon exercise of this option, in accordance with the attached Exhibit 2; provided, however, that (a) if the Corporation shall propose to its stockholders that the Corporation merge or consolidate with or sell substantially all of its assets and business to another corporation (other than a subsidiary controlled by the Corporation), or (b) if another corporation, entity or person, or group of corporations, entities or persons acting in concert shall hold, as a result of a single acquisition or a series of acquisitions, thirty percent (30%) or more of the outstanding voting shares of the Corporation, or shall make a tender offer to the stockholders of the Corporation to acquire shares of its stock, which if successful could result in said corporation, entity, person or group holding thirty percent (30%) or more of the outstanding voting shares of the Corporation, such repurchase rights shall terminate on the date of the first to occur of the events just described. A Repurchase Event shall be (x) any action of the Employee to sell, pledge, or transfer (whether voluntarily, by operation of law, or otherwise) Stock acquired upon exercise of this option, or (y) termination of the Employee's employment with the Corporation (or any of its subsidiaries) by his voluntary action, or (z) termination of such employment on account of the Employee's malfeasance or his violation of this or any other agreement with the Corporation or any similar justifiable cause.The Corporation shall exercise its repurchase rights by delivering to the Employee (or other holder of Stock subject to such rights) written notice of its intent to repurchase Stock pursuant to this Agreement. Provided , however , That if the Corporation does not exercise its repurchase rights within thirty (30) days after it has notice of the

Repurchase Event, the Stock shall thereafter be free of any repurchase right arising from that particular Repurchase Event. The closing of a repurchase shall occur on the fifth business day following delivery of the Corporation's written notice of intent to exercise its repurchase rights, at the principal office of the Corporation or such other place as shall be designated in the written notice. At the closing,, the Corporation shall pay the full purchase price in cash, against its receipt of delivery of the stock certificates representing the shares of Stock being repurchased, duly endorsed or accompanied by such duly executed stock assignment powers as shall be required to effect the transfer of ownership thereof to the Corporation. Nothing contained in this Agreement shall be construed to require the Corporation to repurchase any Stock at any time.

9. Employee Not to Compete. In consideration of the Corporation's grant of this option, the Employee hereby expressly consents and agrees that during the period of his employment by the Corporation (or any of its subsidiaries), and for a period of at least two (2) years after the date such employment terminates, he will not without the consent of the Board of Directors of the Corporation accept or perform work for any entity whose business is significantly competitive with the business carried on by the Corporation and its subsidiaries, or engage in activities which are significantly competitive with the business of the Corporation and its subsidiaries. The Employee and the Corporation do hereby stipulate and agree that the remedies at law for any violation of the provisions of this Section 9 would be inadequate, and that performance of said provisions shall be ordered specifically enforced by any court of competent jurisdiction.

10. Rights as Stockholder. No person shall have any rights as a stockholder with respect to any shares of Stock covered by this option until the date of issuance of a stock certificate to him for such shares. No adjustment shall be made for dividends or other rights for which the record date is prior to the date such stock certificate is issued.

11. Changes in Capital Structure. In the event that the outstanding shares of Stock of the Corporation are hereafter increased or decreased or changed into or exchanged for a different number or kind of shares or other securities of the Corporation, by reason of any reorganization, merger, consolidation, recapitalization, reclassification, stock split—up, combination of shares or dividend payable in capital stock, the Board of Directors shall make appropriate adjustment in the number of shares as to which this option, or the portion hereof then unexercised, shall be exercisable, and in the option price (provided that in no event shall the option price be less than the par value of such shares) to the end that the Employee's proportionate interest shall be maintained as before the occurrence of such event. An identical adjustment shall be made in the number of shares to which the repurchase rights set forth in Section 8 apply.

12. Notices. Any notice of his personal representative shall in writing and sent by registered the persons being given the notice address has been changed by notice
the Corporation or of the Employee or of be deemed to have been properly given if or certified mail, postage prepaid, to at the following address, unless such an given in compliance herewith.

The Corporation
Ionics, Incorporated
65 Grove Street
Watertown, MA 02172
ATI'N: General Counsel

The Employee:
EDUARDO E . ROJAS
53 Madison St Medford Ma 02155

13. Miscellaneous: This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their heirs, executors, administrators, assigns, successors and transferees. This Agreement has been executed in Massachusetts and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. This Agreement contains the full and complete understanding and agreement as to the subject matter hereof and may not be altered, modified or amended except by a further written agreement duly executed and delivered by their respective parties hereto.

Although the Corporation (or one of its subsidiaries) presently intends to tender employment to the Employee, nothing herein shall be deemed to constitute an undertaking of the Corporation (or of any of its subsidiaries) to continue to tender such employment to the Employee.

IN WITNESS WHEREOF, the Corporation, by its officers hereunto duly authorized, and the Employee have duly executed this Agreement in duplicate counterpart copies, as of the date set forth below.

IONICS, INCORPORATED

Date of grant: July 31, 1991

BY:"s/ Arthur L Goldstein "
Chairman and Chief
Executive Officer

ACCEPTANCE

I hereby accept the foregoing option in accordance with its terms and conditions and the terms and conditions of the Plans.

Date 11 / 5/ 1991

"s/ Eduardo E Rojas "
(Signature of Employee)